



COMPETITION COMMISSION OF INDIA

Case Nos. 51, 54 and 56 of 2017

Case No. 51 of 2017

In Re:

Informant (Confidential)

....Informant

And

Grasim Industries Limited (GIL)

P. O. Birlagram, Nagada – 456 331

Madhya Pradesh.

....Opposite Party

With

Case No. 54 of 2017

In Re:

Informant (Confidential)

....Informant

And

Grasim Industries Limited (GIL)

P. O. Birlagram, Nagada – 456 331

Madhya Pradesh.

....Opposite Party



With

Case No. 56 of 2017

In Re:

Informant (Confidential)

....Informant

And

Grasim Industries Limited (GIL)

P. O. Birlagram, Nagada – 456 331

Madhya Pradesh.

....Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**



Appearances: For Informant

In Case No. 51 of 2017: Confidential

In Case No. 54 of 2017: Confidential

In Case No. 56 of 2017: Confidential

Order under Section 26(1) of the Competition Act, 2002

1. The information in the instant matters have been filed under Section 19(1) (a) of the Competition Act (hereinafter '**the Act**') against Grasim Industries Limited (the '**OP**') alleging *inter alia* contravention of Sections 3(4) and 4 of the Act by the OP.
2. The Commission *vide* its order dated 8th March, 2018 had granted confidentiality over the identity of the Informants under Regulation 35(1) of the Competition Commission of India (General) Regulations, 2009.
3. As the subject matter of all these informations is substantially the same, the Commission in exercise of its power conferred under proviso to Section 26(1) of the Act directs clubbing of all these cases and proceeds to pass this common order.

Case No. 51 of 2017

4. As per the information, the Informant is a firm registered under Maharashtra Shops and Establishments Act, 1948 and engaged in the marketing of various type of fibers.
5. It is stated that the Informant had approached the OP expressing its willingness to start trading in Viscose Staple Fiber (VSF) in Indian and international markets. In this regard, the Informant had requested the OP on several occasions to provide the



terms and conditions of doing business with it, including the discount structure, payment terms *etc.* It is averred that the OP declined to provide any such information to the Informant.

6. However, after many reminders, the OP had contacted the Informant over telephone as well as through an e-mail and asked it to provide a list containing the details of suppliers, buyers, number of employees in its firm, its turnover, balance sheet and list of spinners who wanted to source VSF through the Informant. The Informant declined to provide the same citing that disclosing the said information could be detrimental to its business. The Informant had subsequently approached different officials of the OP but his offer was rejected citing the reasons to uphold the brand value, integrity and high quality standards established by the OP.

Case No. 54 of 2017

7. The Informant in this matter is a public limited company and is engaged in manufacturing and export of synthetic and cotton yarns. It has four manufacturing plants in India.
8. It is stated that the Informant was purchasing VSF from the OP for the past so many years with an explicit understanding of receiving the benefits of discount policies offered by it which are declared from time to time and the OP informs about these policies to the Informant verbally, and not in writing.
9. It is averred that the OP frequently changes the aforesaid policies and implements the same at its sole discretion. Consequently, the OP binds the purchasers to pay as per the bill amount, which always remains more than the agreed price. The Informant alleged that it had raised certain claims against the OP on several occasions in the past but the OP unjustifiably failed to pass on the assured benefits in a fair and transparent manner to the Informant.



Case No. 56 of 2017

10. The Informant in this case has also raised similar allegations and stated that the OP is refusing to supply VSF to its company in which the Informant is employed. It is alleged that the OP stopped the supply of VSF to the company despite the company enjoying a credit limit of more than Rupees one crore.
11. It is also alleged that the OP is harassing its company by delaying/ denying the discount scheme benefits offered by it owing to its monopoly in the sale of viscose in the market. Further, it is also alleged that owing to certain legal disputes, the OP has been refusing to sell VSF to the company.
12. Upon considering the information, the Commission heard the Informant in Case No. 56 of 2017 on 1st November, 2017 and the Informants in Case No. 51 of 2017 and Case No. 54 of 2017 on 15th November, 2017.
13. The Commission has perused the information and other material available on record. From the facts of the case and allegations raised by the Informants, it is observed that the primary grievance of the Informants pertains to the alleged abuse of dominant position by the OP which is in violation of the provisions of Section 4 of the Act.
14. It is observed that the contentions of the Informants relate to the conduct of the OP in imposing discriminatory conditions on sale of VSF; monitoring the customers by collecting details of their consumption, production and sales; denying discounts to those who are not complying with its directions; and practising unfair policies with respect to discounts offered.
15. The Informants in Case Nos. 51 and 56 of 2017 have not proposed any relevant market in their respective information whereas the Informant in Case No. 54 of



2017 has defined the relevant market as market for sale of Viscose Staple Fibre in India. It may be noted here that *vide* order dated 10th November, 2016, the Commission in a previous case (Case No. 62 of 2016) with similar allegations has already held the OP as dominant in the relevant market of '*provision for sale of Viscose Stable Fibre in India*'. Considering the aforesaid order and submission of the Informant in Case No. 54 of 2017, Commission considers the above mentioned market as the relevant market in these cases also. Further, with regard to dominance of the OP, in the absence of any material pointing to the contrary, Commission is of *prima facie* view that the market dynamics *vis-a-vis* the OP have not changed to any significant extent and that the OP still holds a dominant position in the relevant market defined above.

16. Coming to the examination of the alleged abusive conduct of the OP regarding not disclosing its discount policies and providing differential treatment to different customers with respect to discounts offered to them, Commission observes that OP is offering various discounts/ incentives/ rebates, *inter alia* quantity discount, continuity discount, umbrella discount, comfort blend discount *etc.* Before giving discounts, OP compels its customers to disclose information regarding their production capacities, list of their suppliers, buyers, their turnover, and balance sheet as a pre-condition for supply of VSF. This information is to be provided by the customers in the format specified by the OP. Further it is alleged that access to this confidential data also permits the OP to monitor the downstream market of viscose yarn thereby enabling it to regulate and influence the price of VSF. The Commission observes that such a conduct amounts to imposing supplementary obligations on the sale of VSF, which by nature and according to commercial usage have no connection with the subject matter of the contract. The OP is able to impose such conditions on the VSF buyers owing to its dominance in the VSF market in India. As such, the OP appears to be *prima facie* violating the provisions of Section 4(2)(a)(i) and Section 4(2)(d) read with Section 4(1) of the Act. Moreover, in an



earlier case, similar conduct of the OP was found to be abusive by the Commission and the DG was directed to investigate the same.

17. The Informant in Case No. 54 of 2017 has alleged that the OP had arbitrarily withdrawn all sales terms (credits and discounts) agreed between the two parties and thus, ultimately refused to supply VSF to it. The Informant has submitted that against the requirement of 275 MT, it had received only 37.49 MT of VSF. For the period of February-August, 2017, it did not receive any supply of VSF from the OP. Due to this, the Informant's production of yarn reduced substantially and it could not supply yarn to its customers. The Informant has further submitted that due to non-supply of yarn, its customers have switched over to others and thus, its business is being wiped out because of the abusive conduct of the OP. The Commission observes that OP is the sole supplier of VSF in the relevant market. Hence, such denial/refusal to deal by OP affects not only the spinning companies who buy VSF for manufacturing yarn, but, also affects the end-users at large, as there exists no other alternative supply option for VSF in the Indian market and import of VSF is also uneconomical owing to imposition of anti-dumping duties. Further, the withdrawal of sales terms and discounts would leave the product of the Informant at a price point at which no takers would be available. The Informant appears to be discriminated *vis-à-vis* similarly placed customers to whom discount is being provided by the OP. Therefore, the Commission is of the view that *prima facie* there is contravention of the provisions of Section 4 (2)(a)(ii) and Section 4(2)(c) read with Section 4(1) of the Act by OP.
18. In view of the foregoing, Commission directs the DG to cause an investigation into these cases under the provisions of Section 26(1) of the Act and file a consolidated investigation report within a period of 60 days from the date of receipt of this order. During the course of investigation, if involvement of any other party or individual is found, the DG shall investigate the conduct of such other parties also who may have indulged in the said contravention.



19. The Commission makes it clear that nothing stated in this order shall tantamount to final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.
20. The Secretary is directed to send a copy of this order to the DG, along with the information and other submissions filed by the parties.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi
Date: 16.05.2018